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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/852,182 | 05/09/2001 | John P. Hamman | Nut-0003 | 4884 |

7590 10/12/2006

Gary J. Calton
5331 Landing Road
Elkridge, MD 21075

EXAMINER

ROBERTS, LEZAH

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1614

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

14

| | | | |
|------------------------------|------------------|---------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/852,182 | HAMMAN ET AL. | |
| | Examiner | Art Unit | |
| | Lezah W. Roberts | 1614 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to the Amendment filed August 20, 2004. All previous rejections have been withdrawn in order to clarify the record. All rejections are new rejections.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

This action is made **NON-FINAL**

Claims

Claim Rejections - 35 USC § 102 - Anticipation

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 8-9, 11-23, 26-27 and 29-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Ojima et al. (US 7,029,717).

Ojima discloses stabilized sucralose compositions that may be used as a sweetener or incorporated in foods and drugs. The compositions comprise sucralose along with one or more substances such as protein hydrolysates and amino acids,

Art Unit: 1614

encompassing claims 1 and 11. These compositions have a taste improving effect. Sucralose comprises 1% of the compositions (see examples, for instance example 17), encompassing claims 2-4 and 12-14. The examples include dry preparations comprising sucralose. The amino acids used in the compositions include any and all amino acids, oligoamino acids (peptide), polyamino acids (polypeptide), and amino acid derivatives. Specifically, such amino acids as, histidine, glycine, alanine, serine, glutamic acid, aspartic acid, lysine, tryptophan, etc: oligoamino acids; such polyamino acids as polylysine etc.; such amino acid derivatives as betaines (trialkylated amino acids), e.g. trimethylglycine; and theanine (col. 7, lines 8-32), encompassing claims 5 and 8-9. A specific amino acid includes D,L-methionine (col. 9, line 55), encompassing claim 5. It can be concluded the sucralose is masking the taste of the added substance, thereby encompassing the method claims. The reference anticipates the claims insofar as it teaches a composition comprising sucralose and an amino acid, protein or protein hydrolysate.

Claims 1-6 and 19-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Golini (Us 2002/0055540).

Golini discloses compositions comprising creatine with an improved taste. The compositions comprise sweeteners such as sucralose. The sweeteners are added to adjust the compositions to the desired taste and sweetness (paragraph 0021). Using the lower limits found in paragraph 0020, the amount of sucralose is about 0.9% of the powder composition. The reference anticipates the instant claims insofar as it teaches a

Art Unit: 1614

composition comprising sucralose and an amino acid derivative creatine and a method of masking the taste of an amino acid analog with sucralose.

Claim Rejections - 35 USC § 103 – Obviousness

1) Claims 7, 10, 25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ojima et al. (US 7,029,717) in view of Newsholme et al. (US 5,639,731).

The reference is discussed above in the Anticipation section. The reference differs from the instant claims insofar as it does not specifically name the amino acids, L-leucine, L-isoleucine or L-valine and the hydroxyl analogs or the keto analogs.

Newsholme et al. disclose branched amino acids and mixtures have bitter taste. The reference also discloses compositions to mask the taste of branched amino acids such as valine, leucine, isoleucine and mixtures thereof (col. 1, line 55 to col. 2, line 59). The reference differs from the instant claims insofar as it does not disclose sucralose as a taste-masking agent.

It would have been obvious to one of ordinary skill in the art to have included the taste masking components to the compositions comprising valine, leucine, isoleucine and mixtures thereof disclosed by the primary reference motivated by the desire to mask the bitter taste of the compositions, as taught by the secondary reference.

2) Claims 1-5, 8-9, 11-23, 26-27 and 29-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtz et al. (US 5,631,299) in view of Cherukuri et al. (US 5,013,716).

Kurtz et al. disclose compositions comprising a sweetener to mask bitter tastes. It also teaches that amino acids, peptides, polypeptides and proteins have bitter and metallic taste (col. 6, lines 45-55). The reference differs from the instant claims insofar as it does not disclose masking the sour taste with sucralose.

Cherukuri et al. disclose compositions comprising sucralose that mask bitter tastes of flavoring agents. The effective amount of sucralose used to mask the bitter taste in one example is 1000 ppm, about 0.1% encompassing claims 2-3 and 16-17 (col. 16). The reference differs from the instant claims insofar as it does not disclose the bitter taste are due to amino acids, amino acid analogs, polypeptides, peptides or proteins.

It would have been obvious to one of ordinary skill in the art to have included the taste masking components to the amino acid and protein compositions disclosed by the primary reference motivated by the desire to mask the bitter taste of the compositions, as taught by the secondary reference.

3) Claims 1-5, 8-9, 11-23, 26-27 and 29-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koder et al. (US 6,455,273) in view of Cherukuri et al. (US 5,013,716).

Kodera et al. disclose a process for decreasing the bitterness of protein hydrolysates. The bitterness is due to the hydrophobic amino acids at the N and C-termini. The reference differs from the instant claims insofar as it does not teach masking the bitterness of the protein hydrolysates with sucralose.

Cherukuri et al., the secondary reference, is discussed above and discloses sucralose is used to mask bitter taste. The reference differs from the instant claims insofar as it does not disclose the bitter taste are due to amino acids, amino acid analogs, or proteins hydrolysates.

It would have been obvious to one of ordinary skill in the art to have included the taste masking components to the amino acid and protein compositions disclosed by the primary reference motivated by the desire to mask the bitter taste of the compositions, as taught by the secondary reference.

4) Claims 1-5, 8-9, 11-23, 26-27 and 29-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daravingas et al. (US 6,235,320) in view of Cherukuri et al. (US 5,013,716).

Daravingas et al. discloses protein hydrolysates have undesirable flavors. The reference differs from the instant claims insofar as it does not disclose a composition comprising sucralose and protein hydrolysates or a method of masking the undesirable flavor of the protein hydrolysates with sucralose.

Cherukuri et al., the secondary reference, is discussed above and discloses sucralose is used to mask bitter taste. The reference differs from the instant claims

Art Unit: 1614

insofar as it does not disclose the bitter taste are due to amino acids, amino acid analogs, or proteins hydrolysates.

It would have been obvious to one of ordinary skill in the art to have included the taste masking components to the composition comprising protein hydrolysates disclosed by the primary reference motivated by the desire to mask the undesirable flavor of the compositions, as taught by the secondary reference.

Claims 1-36 are rejected.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1614

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lezah Roberts
Patent Examiner
Art Unit 1614



Frederick Krass
Primary Examiner
Art Unit 1614

